

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Michael S. Selvanto
9 Caldwell Place
Elizabeth, New Jersey
File Number EB-02-NY-288
NAL/Acct. No. 200332380017
FRN 0008-1141-75

FORFEITURE ORDER

Adopted: August 6, 2004

Released: August 10, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Mr. Michael S. Selvanto ("Mr. Selvanto") for willful violation of Section 301 of the Communications Act of 1934, as amended ("Act").

2. On February 18, 2003, the Commission's New York, New York Field Office ("New York Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") to Mr. Selvanto for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

3. On November 26, 2002, in response to complaints of November 19 and 26, 2002 regarding an unlicensed FM broadcast station on 91.9 MHz in Elizabeth, New Jersey, agents from the Commission's New York Office observed unauthorized FM radio broadcasts in Elizabeth, New Jersey on the frequency 91.9 MHz.

1 47 U.S.C. § 301.

2 Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332380017 (Enf. Bur., New York Office, released February 18, 2003).

3 Under Section 15.239 of the Commission's Rules, 47 C.F.R. § 15.239, the use of an intentional radiator in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 microvolts/meter at three meters.

authorization for this operation in Elizabeth, New Jersey.

4. Also on November 26, 2002, the agents, with Mr. Selvanto's permission and in his presence, inspected the radio studio and found a 500 watt FM broadcast transmitter in operation. Mr. Selvanto admitted he was the person operating the station. During the investigation, one of the agents issued and hand delivered a Warning of Unlicensed Radio Operation letter ("Warning Letter"), to Mr. Selvanto.

5. On November 27, 2002, the New York Office sent an identical Warning Letter, by First Class and Certified Mail Return Receipt Requested, to Mr. Selvanto for unlicensed operation on the frequency 91.9 MHz. The letter was addressed to Mr. Selvanto's business, The CFM Entertainment Center, at its business address, 9 Caldwell Place, Elizabeth, New Jersey, 07201. The Certified Mail Return Receipt Requested letter was returned to the Commission unclaimed, the First Class letter was not returned.

6. On February 18, 2003, the New York Office issued an *NAL* for a \$10,000 forfeiture to Mr. Michael S. Selvanto for operating a radio station without Commission authorization in willful violation of Section 301 of the Act. In his April 7, 2003, response, Mr. Selvanto does not dispute the violation, but requests the Commission take into account the equity factors in his operation such as he was unaware his operation was over power, the operation was not for personal monetary gain, but for the community churches and businesses, he never received the November 27, 2002 Warning Letter and immediately shut down the operation upon notice of violation, and his inability to pay. He submitted no documentation substantiating an inability to pay.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Red 17087 (1997), recon. denied, 15 FCC Red 303 (1999) "Policy Statement". In examining Mr. Selvanto's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁵

8. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁶ Section 15.239 of the Commission Rules⁷ permits certain unlicensed low powered radio operation, but Mr. Selvanto's operation greatly exceeded the permissible power levels. Accordingly, a license was needed for the station's operation. Based on Mr. Selvanto's admissions and the agents' observations during the inspection, we conclude that Mr. Selvanto willfully violated Section 301 of the Act.⁸

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 503(B)(2)(D).

⁶ 47 U.S.C. § 301.

⁷ 47 C.F.R. § 15.239

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991).

9. Mr. Selvanto requests that we consider the circumstances of the violation. In his response, Mr. Selvanto does not dispute the violation, but in mitigation of the forfeiture he claims he was unaware that he was transmitting higher than the allowable power. We reject his argument. Mr. Selvanto was operating with power in excess of that authorized for low power. Accordingly, a license was required. Ignorance of the rules is no excuse.⁹ He knew his equipment, its power level and he chose to operate with it at that power level in willful violation of Section 301 of the Act.

10. Next, Mr. Selvanto states that he intended to operate a low power radio station for the benefit of local community churches and businesses and not for personal monetary gain. The fact that the station may perform useful service in the community does not mitigate his violation.¹⁰ Moreover, Mr. Selvanto could have performed his public service under the low power unlicensed transmissions authorized by Section 15.239 of the Rules, but he chose not to do so. Further, Mr. Selvanto claims he did not receive the November 27, 2002 Warning Letter and that he shut down immediately after being inspected by the agents. The fact that he may not have received the November 27, 2002 Warning Letter is immaterial. He was informed of the violation by the agent and he was hand served with an identical Warning Letter during the November 26, 2002 inspection. Additionally, it is well established that there is no obligation on the Commission staff to issue a letter prior to issuance of an *NAL*.¹¹ As to his immediately shutting down the unauthorized transmissions following notification of the violation, the Commission has repeatedly stated that remedial actions taken to correct a violation are expected and as such are not mitigating factors warranting reduction of a forfeiture.¹²

11. Mr. Selvanto's request for waiver of the forfeiture based on his inability to pay was not accompanied by his tax returns from 1999 through 2001, or any other documentation as set forth in paragraph 12 of the *NAL*.¹³ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Accordingly, there is no basis to cancel or reduce the assessed forfeiture amount due to a demonstrated inability to pay.

12. After careful and complete review of all relevant factors, based on the above cited circumstances, we conclude that Mr. Selvanto willfully violated Section 301 of the Act and find no basis for mitigation.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Mr. Michael S. Selvanto **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Act.

⁹ *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) (ignorance of the law is not a mitigating circumstance) citing *Vernon Broadcasting, Inc.*, 60 RR 2d 1275, 1277 (19866) and *Fay Neel Eggleston*, 19 FCC 2d 829 (1969).

¹⁰ *MRJ, Inc.*, DA-04-1298, (Enf. Bur. released May 12, 2004).

¹¹ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002); *Missouri RSA No.2 Partnership D.B.A. ALLTEL*, 18 FCC Rcd 12653 at 12654 (Enf. Bur. 2003); and *ARACELIS ORTIZ*, 19 FCC Rcd 2632 at 2636 (Enf. Bur. 2004)

¹² See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd. 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVL, Inc.* 42 FCC 2d 258, 259 (1973).

¹³ Mr. Selvanto was instructed in ¶ 12 of his *NAL* that "The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless [he] submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects [his] current financial status...."

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the “Federal Communications Commission,” to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Mr. Michael S. Selvanto, 9 Caldwell Place, Elizabeth, New Jersey 07201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ 47 U.S.C. § 504(a).